



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a healthcare management business, seeks to employ the Beneficiary as a physical therapist. It requests classification of the Beneficiary as an advanced degree professional under the second preference employment-based immigrant visa category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This immigrant visa category allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish that it would be the Beneficiary's employer. The Petitioner bears the burden of establishing eligibility for the requested immigration benefit. See section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will sustain the appeal and approve the petition.

The offered position of physical therapist is a Schedule A occupation. A Schedule A occupation is an occupation for which the U.S. Department of Labor (DOL) has determined that: (1) there are not sufficient U.S. workers who are able, willing, qualified, and available; and (2) the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of foreign workers in that occupation. 20 C.F.R. § 656.5. There are currently two Schedule A occupations: professional nurses and physical therapists. 20 C.F.R. § 656.5(a).

A petition involving a Schedule A occupation does not require the petitioner to test the labor market and obtain a labor certification approval from the DOL prior to filing an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). 20 C.F.R. § 656.15. Instead, the petitioner files an immigrant visa petition directly with USCIS together with a Schedule A application. See 8 C.F.R. § 204.5(a)(2). Schedule A applications are filed on ETA Form 9089, Application for Permanent Employment Certification. 20 C.F.R. § 656.15. If USCIS approves the immigrant visa petition, the foreign national may apply for an immigrant visa abroad or, if eligible, for adjustment of status in the United States. See section 245 of the Act, 8 U.S.C. § 1255.

After reviewing the entire record of proceeding and the Petitioner's arguments on appeal, we conclude that it is more likely than not that the Beneficiary will be employed by the Petitioner. The Director's decision will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained.